

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 142.

NARCISO BASSO, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED MAY 7, 1916.

(24,200)

(24,200)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., AUGUST 20, 1915.



1 I. Petition. Filed July 7, 1905.

In the Court of Claims of the United States, Term 1905-1906.

No. 28142.

NARCISO BASSO, Claimant,
against
THE UNITED STATES.

Petition.

Narciso Basso, the petitioner above named by Henry M. Ward, his attorney, for his petition against the United States, respectfully shows to this Honorable Court and alleges as follows:

First. That your petitioner is a native born subject of the King of Spain and at all the times hereinafter referred to, resided, has since resided and now resides in the town of Humacao, in the Island of Porto Rico.

Second. That on the 12th day of August, 1898, a protocol, providing for a treaty of peace between the Kingdom of Spain and the United States of America was duly signed by the representatives of both governments, and thereafter and on the 10th day of December, 1898, the treaty of peace was entered into and duly signed by the duly authorized representatives of both governments, and thereafter and on the 6th day of February, 1899, the said treaty
2 of peace was duly ratified by the Senate of the United States of America and was thereafter ratified by the Queen Regent of Spain on the 19th day of March, 1899, and by the Spanish Cortes, and said treaty was finally ratified by both governments, and ratifications thereof exchanged at the city of Washington in the District of Columbia on the 11th day of April, 1899, and on the same day proclaimed by the President of the United States of America.

Third. That said Island of Porto Rico was occupied by the military forces of the United States prior to the 1st day of January, 1899, and on the 1st day of February, 1899, the President of the United States by a certain executive order promulgated the "Amended Customs Tariff and Regulations for Ports in Porto Rico," as a tariff fixing and providing for the collection of duties upon all articles imported into Porto Rico, and thereafter duties were collected under and pursuant to said "Amended Customs Tariff and Regulations," and the amendments thereof made from time to time by order of the President until the 1st day of May, 1900.

Fourth. That during the said period from the 1st day of February, 1899, to the 1st day of May, 1900, certain officers of the Army of the United States were designated to act and did act as
3 collectors of customs at the several ports of entry in Porto Rico, and enforced the said "Amended Customs Tariff and Regulations" at all times during said period upon articles of

merchandise brought into Porto Rico from the United States, as well as upon similar articles imported into Porto Rico from foreign countries.

Fifth. That during the months of July and August, 1899, George W. Davis, Brigadier-General of Volunteers, was in command of the department of Porto Rico, and had established a provisional court of the United States for the Department of Porto Rico, under authority of General Order No. 88 to the terms of which order your petitioner begs leave to refer when produced upon the trial of this action.

Sixth. That on or about the 13th day of July, 1899, an information was filed by one G. M. Keedy, the prosecuting attorney of the Provisional Court, charging your petitioner with the crime of having imported into the Island of Porto Rico at the City of Humacao on the 29th day of April, 1899, on the schooner Jennie A. Stubbs, a certain trunk containing scissors valued at the sum of Two hundred dollars (\$200), without having made entry of the same in the Custom House at Humacao, Porto Rico, and of having illegally imported into the Island of Porto Rico from the United States said goods without having paid the duty thereon. That your petitioner was arraigned under said charge on the 14th day of July, 1899, and pleaded not guilty, and thereupon said plea was entered and

4 the cause set for trial on July 18, 1899. At the said trial your petitioner appeared by counsel and testified as a witness in his own behalf, and by said counsel your petitioner entered a plea that Sections 2865 and 3082 of the Revised Statutes of the United States were without force and effect in Porto Rico on said date, to wit: the 29th day of April, 1899, and further that the Island of Porto Rico then was a part of the United States and that there was no warrant of law for imposing any duty on goods brought from the United States into that island at that time. That said defences were not allowed and your petitioner was found guilty and thereupon your petitioner was sentenced by the Court to be confined in the "Carcel Real" or prison in the City of San Juan, Porto Rico for the period of one month and pursuant to said sentence, your petitioner was thereupon imprisoned and kept in close confinement in said prison for the term of twenty-seven days, the sentence of one month having been commuted three days for good behavior on the part of your petitioner.

Seventh. Your petitioner further shows that the said prison was the place where all convicts were imprisoned and that during said term your petitioner suffered great hardships and privations and had to submit to great indignity in being deprived of his liberty and put in the company of felons and convicts, and that your petitioner suffered special damage in that your petitioner retained
5 an attorney to defend him against the said accusation and that the services rendered by said attorney to your petitioner in the premises, were reasonably worth the sum of Five hundred dollars (\$500), which sum was charged by said attorney and paid to him by your petitioner; that your petitioner prior to the trial was held under bail of Two Thousand Dollars (\$2,000) within the limits of

the town of Humacao for the period of one month and could not leave said town without the permission of Captain C. E. Dentler, before whom your petitioner was thereafter tried; that during said period he was kept under watch by the military authorities and thereby brought into disrepute in the community and that your petitioner was compelled to hire a conveyance to take him to San Juan to meet the said accusation and to attend the trial, the reasonable cost of which, paid by your petitioner, was the sum of Twenty Dollars and that during his imprisonment the food offered to your petitioner by the warden of the prison was of such bad quality and so different from that to which your petitioner was accustomed, that he was obliged to buy food from the jailer at the cost of Thirty Dollars (\$30); that your petitioner at the time of his said accusation, was engaged in business with his brother as general commission
6 merchants under the firm name of "Bertran Hermanos" with a capital of \$100,000 and with yearly profits of about \$20,000 and your petitioner was a prominent and highly respected member of the community, but by reason of said charge and accusation and of said imprisonment, your petitioner was not only deprived of his liberty but his good name and reputation in the community were injured.

Eighth. That by reason of the premises your petitioner has suffered general damage of Seven Thousand Five Hundred (\$7,500) Dollars and special damage of Two Thousand Five Hundred (\$2,500) Dollars, making in all Ten Thousand (\$10,000) Dollars.

Ninth. That as your petitioner is advised by counsel there was on the said twenty-ninth day of April, 1899, no warrant of law for the collection of any duties whatever upon any articles brought into the Island of Porto Rico from the United States and that the act of which your petitioner was then accused and for which he was tried and condemned as aforesaid, did not then constitute a crime and that the said sections of the Revised Statutes of the United States under which said Provisional Court claimed authority to act, were not in force in the Island of Porto Rico and said Provisional Court was wholly without jurisdiction in the premises and its sentence was null and void and by reason of said accusation, trial, conviction, sentence and imprisonment, your petitioner was deprived of his liberty
7 without due process of law and in violation of the rights secured to him by the Constitution of the United States.

Wherefore your petitioner demands judgment against the United States for the sum of Ten Thousand (\$10,000) Dollars and for such other and further order or relief as he may prove himself entitled to and your petitioner will ever pray, etc.

Dated, July 5, 1905.

(Signed)

NARCISO BASSO,

Petitioner.

HENRY M. WARD,

Attorney and Counsel for Petitioner.

32 Nassau Street, New York City.

8 STATE OF NEW YORK,
 County of New York, ss:

Narciso Basso, being duly sworn, deposes and says: I am the petitioner above named; I have read the foregoing petition and the same is true to the best of my knowledge, information and belief. I am the owner of the claim herein above referred to, and I have never assigned said claim or any part thereof; there are no offsets or counter-claims to the said claim, and I am now entitled to receive the whole amount thereof as prayed in the petition.

(Signed)

NARCISO BASSO.

Sworn to before me this 5th day of July, 1905.

[L. s.]

RALPH KIRBY,
 Notary Public, Nassau County.

Certificat. filed in New York County.

9 II. Traverse. Filed July 1, 1913.

In the Court of Claims of the United States, December Term, A. D.
 1913-14.

No. 28142.

NARCISO BASSO
 vs.
 THE UNITED STATES.

And now comes the Attorney General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

HUSTON THOMPSON,
 Assistant Attorney General.
 J. R. W.

10 III. Defendant's Motion to Dismiss for Want of Jurisdiction.
 Filed July 1, 1913.

Defendant's Motion to Dismiss.

Now comes the defendant, by its Attorney General, and moves the court to dismiss the above-entitled cause, upon the ground that it has no jurisdiction to consider the same because it is an action for damages in a case sounding in tort.

HUSTON THOMPSON,
 Assistant Attorney General.

W. F. NORRIS, Attorney.

11 IV. Argument and Submission of said Motion.

On February 24, 1914, the defendant's motion to dismiss for want of jurisdiction came on to be heard. Mr. William F. Norris was heard in support of the motion; Mr. Henry M. Ward was heard in opposition and the motion was submitted.

12 V. Judgment of the Court.

At a Court of Claims held in the City of Washington on the 23rd day of March, 1914, judgment was ordered to be entered as follows:

The Court on due consideration of the premises find for the defendant, and do order, adjudge and decree, that the defendant's motion to dismiss claimant's petition for want of jurisdiction be sustained, and that the petition of the claimant, Narciso Basso, be and the same is hereby dismissed.

By the COURT.

13 VI. Application of Claimant for and the Allowance of an Appeal.

From the judgment rendered in the above entitled cause on March 23, 1914, in favor of the United States, the claimant, by his attorney, on this 24th day of April, 1914, does hereby make application for and give notice of an appeal to the Supreme Court of the United States.

HENRY M. WARD,

Attorney for Claimant.

Dated April 24, 1914.

Ordered: That the above appeal be allowed as prayed for.

By the COURT.

April 27, 1914.

14 Court of Claims.

No. 28142.

NARCISO BASSO

VS.

THE UNITED STATES.

I, John Randolph, Assistant Clerk Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the judgment of the Court sustaining the defendant's motion to dismiss for want of jurisdiction; of the application of claimant for, and the allowance of, an appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims this 4th day of May, A. D. 1914.

[Seal Court of Claims.]

JOHN RANDOLPH,
Assistant Clerk, Court of Claims.

Endorsed on cover: File No. 24,200. Court of Claims. Term No. 142. Narciso Basso, appellant, vs. The United States. Filed May 7th, 1914. File No. 24,200.

